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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	Case 1:17-cr-00284
)	
Plaintiff,)	
)	
v.)	Alexandria, Virginia
)	January 18, 2019
CHRISTOPHER ROBERT SUEIRO,)	10:58 a.m.
)	
Defendant.)	
)	Pages 1 - 76

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ANTHONY J. TRENGA
UNITED STATES DISTRICT COURT JUDGE

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

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10 THE DEFENDANT, CHRISTOPHER ROBERT SUEIRO, IN PERSON
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1 THE CLERK: Criminal Case 1:17-cr-284, *United*
2 *States v. Christopher Sueiro*.

3 Counsel, will you please note your
4 appearances for the record.

5 MR. BURKE: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. BURKE: Jim Burke and Kellen Dwyer on
8 behalf of the United States.

9 THE COURT: Good morning.

10 MR. GOROKHOV: Good morning, Your Honor.
11 Eugene Gorokhov here as court-appointed counsel for
12 Mr. Sueiro.

13 THE COURT: All right. Mr. Sueiro is
14 present.

15 We're here for a motions day. Mr. Gorokhov,
16 do you want to summarize what outstanding matters there
17 are pending?

18 MR. GOROKHOV: Yes, Your Honor.

19 There's the defendant's motion to represent
20 himself which remains outstanding. I have not been
21 able to speak with Mr. Sueiro, which is his right.
22 I've made attempts to do so but have not been
23 successful. There's the pending motion for a bill of
24 particulars, and finally, Your Honor, the suppression
25 motion.

1 THE COURT: Okay. We also have, filed by
2 Mr. Sueiro, what appears to be a motion to dismiss
3 based on the Speedy Trial Act.

4 THE DEFENDANT: There is actually --

5 THE COURT: Have a seat for a moment,
6 Mr. Sueiro.

7 THE DEFENDANT: -- listed on there as well
8 for why this must be dismissed. It is not just a
9 Speedy Trial Act.

10 THE COURT: All right. Have a seat for a
11 moment.

12 From the government's perspective, are there
13 any other outstanding issues?

14 MR. BURKE: No, Your Honor.

15 THE COURT: All right. Mr. Sueiro, why don't
16 you come to the podium, please.

17 THE DEFENDANT: That's exactly what I was
18 wanting to do.

19 THE COURT: Mr. Sueiro, are you still
20 requesting to represent yourself?

21 THE DEFENDANT: To be clear, I am not -- it's
22 not that I'm requesting. It's that it is my right, and
23 so I am just simply doing it. It -- I don't need to
24 request something that is my lawful right to do.

25 The *Faretta* law -- I did look over it -- it

1 actually says the same kind of thing: That once
2 someone has been shown to be competent, as I have with
3 the competency evaluation, that they cannot be denied
4 their right to self-representation under the Sixth
5 Amendment.

6 And furthermore, it's a moot point anyway
7 because the case law of *Marbury v. Madison* states,
8 quote, The Constitution of these United States is the
9 supreme law of the land. Any law that is repugnant to
10 the Constitution is null and void of law.

11 Now, one of the meanings of the word
12 "repugnant," if you look in the dictionary, is
13 contradictory. So that law is contradictory to the
14 Constitution because the Constitution under the Sixth
15 Amendment says I have right to counsel, but it does not
16 say obligation to counsel.

17 There's a difference between a right and an
18 obligation. The right is optional whereas an
19 obligation would be, of course, mandatory. Since it is
20 a right, that means I have the right to exercise or to
21 waive it as I have stated already that I have done.

22 And because of the case law of *Marbury v.*
23 *Madison*, that negates the *Faretta* law and any other law
24 you could ever point to or create that contradicts the
25 Constitution as that law does.

1 So, therefore, I am not asking to represent
2 myself, and I'm not asking permission or motion for it
3 or anything because it's my right. So I'm just simply
4 going to exercise my right, and that's that.

5 Now, I also have come with, now, an official
6 motion to dismiss, which I would've done earlier but
7 it's hard to get paperwork at the Alexandria facility.
8 It kept denying me. That's why it's taken so long. So
9 now I finally got that.

10 And just to enter it on the record, it does
11 say that I respectfully move this Court to take the
12 following action in this case. It then says, quote,
13 dismiss the case for the following reasons:

14 One, my Sixth Amendment right to speedy trial
15 has unequivocally and egregiously been violated as the
16 date for its deadline was May 1, 2018;

17 Two, this Court lacks the jurisdiction as
18 required by law. Therefore, no lawful discretion
19 exists but to dismiss the action for want of
20 jurisdiction;

21 Three, the law actually requires there to be
22 at least one actual individual victim in a case in
23 order for the case to be legitimately criminally
24 prosecuted, and the role of the victim cannot be
25 assumed by an organization or corporation such as the

1 corporation known as the United States of America. But
2 rather, the victim must be an individual, and that
3 individual must be present in the court and take the
4 stand to testify a claim against the one charged as to
5 how they feel personally victimized by the alleged --

6 My apologies. I'll start after United States
7 of America:

8 But rather the victim must be an individual,
9 and that individual must be present in the court and
10 take the stand to testify a claim against the one
11 charged as to how they feel personally victimized by
12 the alleged action -- S in parentheses -- that the
13 accused is charged with in some way that caused them to
14 incur some sort of damage to their personal property
15 and/or loss of their property.

16 There's no such victim in this case.

17 Also, if you look, *Black's Law Dictionary*
18 defines the meaning of victim. So now, Mr. Trenga,
19 there's actually -- there's actually three reasons --

20 THE COURT: I want you -- I want you to stop
21 for a moment.

22 THE DEFENDANT: -- not one.

23 But I'm not done entering -- I've entered the
24 motion now into the record, but now I must also
25 remind --

1 THE COURT: Mr. Sueiro, I'm directing you to
2 stop talking.

3 THE DEFENDANT: But I'm within my lawful
4 rights to do what I'm doing as the case law *Earle v.*
5 *McVeigh* states, which I've told you before: Every
6 person is entitled to an opportunity to be heard in a
7 court of law upon every question involving his rights
8 or interests before he's affected by any judicial
9 decision on the question.

10 And *Renaud v. Abbott* says it is a fundamental
11 doctrine of law that a party to be affected by a
12 personal judgment must have his day in court and an
13 opportunity to be heard.

14 I'm doing nothing but exercising my lawful
15 rights.

16 So under the first reason here, as I said --

17 THE COURT: Mr. Sueiro, I'm directing you to
18 be quiet for the last time, or you're going to be
19 removed from the courtroom. Do you understand?

20 THE DEFENDANT: That would be a useless
21 delaying tactic on your part, Mr. Trenga, because you
22 know by law I have to be present.

23 I'm just getting my motion onto the record
24 and making it clear why I'm citing these three reasons.

25 THE COURT: Marshal, would you have

1 Mr. Sueiro sit down, please.

2 THE DEFENDANT: I'm -- I'm just making it
3 clear as to why I'm citing these three reasons.

4 THE COURT: All right. Sit down, sir. Sit
5 down. Sit down.

6 THE DEFENDANT: I'm exercising my lawful
7 rights.

8 THE COURT: Sit down.

9 Mr. Sueiro, you have the right to represent
10 yourself if, among other things, you agree and
11 represent you agree that you're going to follow the
12 Court's directions. That means you speak when you're
13 instructed to speak, you stop speaking when you're
14 instructed not to speak, and you comply with the rules
15 of court. Are you prepared to comply with the rules of
16 court?

17 THE DEFENDANT: According to the letter of
18 the law, that differs from what you're saying now.

19 THE COURT: All right. And also, if you
20 don't comply with the Court's rulings, you're going to
21 be removed from the courtroom, and the case will
22 proceed with your appointed counsel in your absence.
23 Do you understand that?

24 THE DEFENDANT: That I do not -- I comprehend
25 what you're saying, but I do not -- I don't stand under

1 that.

2 THE COURT: All right.

3 THE DEFENDANT: That is not the letter of the
4 law.

5 THE COURT: All right.

6 THE DEFENDANT: The letter of law, as I just
7 quoted to you, says that I have the right to represent
8 myself because I have the right to waive my Sixth
9 Amendment right to --

10 THE COURT: All right.

11 THE DEFENDANT: -- to counsel, which I have
12 done. You can't take that right away from me unless I
13 agree to give it up, which I am not doing, which I
14 would be doing if I agreed to do things your way, which
15 is not according to the law. I am doing things
16 according to how the law -- the letter of the law
17 operates. And that is why I make this motion to
18 dismiss. Because the first of the reasons about the --
19 the Sixth Amendment right to speedy trial being
20 violated, as I said, the date for that deadline was
21 May 1. We are now more than eight months past that
22 deadline.

23 Now, the case law of *Cooper v. Aaron* states
24 no state legislator or executive --

25 THE COURT: All right. That's enough.

1 That's enough, Mr. Sueiro.

2 THE DEFENDANT: -- or judicial officer can
3 war against the Constitution --

4 THE COURT: All right.

5 THE DEFENDANT: -- without violating his
6 undertaking to support it.

7 And secondly, *Scheuer v. Rhodes* states --

8 THE COURT: All right. I want you to be
9 quiet now. I want you to be quiet.

10 THE DEFENDANT: -- have no immunity when
11 violating a Constitutional right from liability for
12 they are deemed to know the law. That states very
13 clearly the letter of the law that you don't have --

14 THE COURT: All right. Mr. Sueiro, I'm
15 asking you to stop. Will you stop, or are you going to
16 be removed from the courtroom?

17 THE DEFENDANT: That's the first reason.

18 THE COURT: Either you stop, or you're going
19 to be removed from the courtroom. Do you understand?

20 THE DEFENDANT: You want me to stop
21 exercising my lawful right --

22 THE COURT: I want you to stop talking, or
23 you're going to be removed from the courtroom.

24 THE DEFENDANT: It's my lawful right to do
25 what --

1 THE COURT: All right. Remove the defendant,
2 please.

3 THE DEFENDANT: I am exercising my lawful
4 right, and I didn't even touch on the jurisdiction
5 issue yet. That's --

6 THE COURT: All right.

7 THE DEFENDANT: -- another one. By the way,
8 I challenge jurisdiction.

9 THE COURT: All right.

10 (The defendant is removed from the courtroom.)

11 THE COURT: Mr. Gorokhov, I don't know if
12 there's any alternative other than to proceed to trial
13 with you as counsel. If he continues to disrupt the
14 proceedings, we'll proceed in his absence.

15 Does the government have any thoughts about
16 how to proceed otherwise?

17 MR. BURKE: No, Your Honor. We would defer
18 to the Court.

19 THE COURT: Okay. With respect to these
20 motions, have you gotten any discovery in this case?

21 MR. GOROKHOV: I have, Your Honor.

22 THE COURT: All right. Are you still
23 pressing the bill of particulars?

24 MR. GOROKHOV: Yes, Your Honor. I have two,
25 I think, fairly specific points on that.

1 THE COURT: All right.

2 MR. GOROKHOV: So after receiving the
3 discovery in this case, we also, as Your Honor knows,
4 engaged a forensic expert. We went to the Fairfax
5 County facility where the evidence is kept, the
6 contraband evidence, and we did kind of a spot-check on
7 some of the files that the government had listed in its
8 reports.

9 What our forensic expert found was that for a
10 lot of these files, there was something called a log
11 file, which is a computer's record that a file at one
12 time existed but not the actual underlying file. So
13 that's a matter that I didn't put in my motion because
14 our examination happened after the fact.

15 So that's just a further issue, Your Honor,
16 why we need a specific list under each count. All
17 we're requesting here, Your Honor, is a specific list
18 of documents or files that the government intends to
19 rely on in presenting the case against Mr. Sueiro.

20 The government -- these are -- there are
21 thousands of files, Your Honor, thousands of potential
22 documents. The only other way for me to get this
23 information is to wait until they have to produce an
24 exhibit list. And at that point, I can't really --
25 there's not going to be enough time for me to go back

1 and look at this material.

2 THE COURT: All right. Let me hear from the
3 government.

4 What's really the objection to providing what
5 appears to be pretty limited and straightforward
6 information as to each count?

7 MR. BURKE: We've provided all the
8 information. He's seen the computers that are the
9 basis for the charges, and the indictment says the
10 timeline in which the acts took place.

11 I still don't understand exactly what the
12 request is. If he wants a list of every file on the
13 computer that we consider to be CP, I mean, I believe
14 there's 1,600 files that are -- that are child
15 pornography on the computer.

16 I don't think at this point -- you know,
17 we're always happy to provide as much help as possible
18 in helping defense counsel review the discovery and
19 zero in on the most relevant materials, but I don't
20 think the government should be required to at this
21 point limit -- say that we're only going to talk about,
22 you know -- of the -- of the 1,600 CP files, we only
23 get to use, you know, the 100 that we identify at trial
24 or the 10 that we identify that -- you know, at this
25 point, the government doesn't need to be limited, I

1 guess, in that sense.

2 THE COURT: Well, it's not about limiting.
3 It's identifying the offense conduct.

4 I am going to order the government to
5 identify as to each of the four counts the specific
6 videos. It doesn't have to be the specific images so
7 long as it's the specific videos that are referred to
8 in each count during the period alleged, as well as --
9 I think there should be described how it's alleged that
10 these videos were received. It seems to me that's
11 fairly straightforward, as well as the manner of the
12 receipt of the materials, which, presumably, were
13 through a particular device.

14 Yes.

15 MR. BURKE: Your Honor, what we could do,
16 Your Honor, is conduct what we call a reverse proffer
17 where we bring the defense counsel into our laboratory
18 and we have our experts walk them through all of our
19 evidence if that will suffice.

20 THE COURT: All right. Mr. Gorokhov, do you
21 want to proceed in that way initially?

22 MR. GOROKHOV: Your Honor, initially,
23 although I'm skeptical. As I've said, we have gone to
24 the lab. I mean, literally, what's happening in this
25 case, Your Honor, is the government is saying there's

1 thousands upon thousands upon thousands of files in
2 this computer.

3 THE COURT: Right.

4 MR. GOROKHOV: And who knows which one could
5 be under which specific count or which ones are going
6 to be relied on, which ones are not going to be relied
7 on.

8 And furthermore, Your Honor, as I've -- as
9 I've already stated, what we found out is actually a
10 lot of these so-called files are merely just log files.
11 They don't contain an actual video or image.

12 THE COURT: Why don't you sit down for a
13 minute.

14 Go ahead.

15 MR. GOROKHOV: So, Your Honor, that's really
16 the problem. They're pointing to a pile of many
17 thousands of documents and saying, Any of this could,
18 you know, potentially be in any count.

19 THE COURT: How many devices are we talking
20 about here that this was received on?

21 MR. BURKE: There are six devices, Your
22 Honor.

23 THE COURT: Six?

24 MR. BURKE: Yes.

25 THE COURT: All right. I am going to require

1 that there be a specification as to each of the counts
2 as to which images and which devices are being charged
3 on each of those.

4 All right. When is our trial date?
5 March 22, is that when it is?

6 MR. BURKE: March 25, Your Honor.

7 THE COURT: All right. Let's try to do that
8 within ten days. All right.

9 All right. Anything else?

10 Are you pressing your suppression motion?

11 MR. GOROKHOV: I am, Your Honor. The motions
12 were initially filed by prior counsel.

13 THE COURT: Right.

14 MR. GOROKHOV: And I had just a few points I
15 wanted to stress without waiving the issues raised in
16 those motions.

17 THE COURT: All right.

18 MR. GOROKHOV: All right. Thank you, Your
19 Honor.

20 So really, the focus of my comments today are
21 going to be what's called the threats warrant -- that
22 was the initial warrant to seize all of the items from
23 the house -- and, subsequently, the forensics warrant,
24 which was the first warrant to examine the items on the
25 computer that eventually led to the discovery of the

1 illegal materials in this case.

2 Now, for purposes of context and clarity, I
3 just wanted to emphasize a couple of things about the
4 background of this case since it's been going on for a
5 while and there are prior state prosecutions.

6 The warrants in this case -- the initial
7 warrant to seize was premised on very specific conduct.
8 It was premised on two threatening e-mails that
9 Mr. Sueiro was alleged to have sent to a specific
10 person, a colleague at his place of work. They were
11 sent on two specific dates, November 2 and November 4,
12 2014. That was the entirety of the probable cause on
13 which the warrants in this case were based -- or at
14 least the threats warrant in this case was based, the
15 warrant I'm talking about.

16 Now, these were not -- it's important to know
17 these were not text messages. These were not phone
18 calls. These were not letters that were sent, and they
19 weren't even files that were attached to an e-mail.
20 They were just e-mails. The content of the threat was
21 contained within the e-mail.

22 Now, an arrest warrant for Mr. Sueiro was
23 issued on November 2 after the sending of the first
24 e-mail by the Prince William Police Department, Prince
25 William County, and a warrant was actually executed

1 three days later when Mr. Sueiro was arrested. That
2 was on November 5, Your Honor.

3 Now, on November 6, Detective Leightley went
4 to the residence where Mr. Sueiro lived, the residence
5 that was ultimately searched. He spoke with an
6 individual by the name of Daniel Benson, who was the
7 landlord of that residence. And Mr. Benson told him,
8 according to the Detective Leightley's affidavit, a
9 couple of things. He told him: Christopher Sueiro
10 rents a room upstairs in the house. Christopher Sueiro
11 has a computer in his room that's connected to the
12 Internet. And I believe he also told him Christopher
13 Sueiro owns a handgun, and I believe it was a ballistic
14 vest or a helmet.

15 The next day Detective Leightley went to the
16 magistrate judge -- state magistrate and swore out an
17 affidavit seeking to seize a very broad category of
18 items. For example, Your Honor, seeking to seize all
19 electronic devices without reference to who they were
20 owned by, computers, phones, GPS devices, printers,
21 scanners, document -- equipment, plotters -- which I
22 didn't know what a plotter was until I looked it up
23 online -- along with a broad range of documents.

24 So before, Your Honor, addressing the
25 probable cause and how that relates to the breadth of

1 the warrant in this case, there's an initial question
2 of which list of items controls, which list of items
3 did the magistrate judge actually authorize the police
4 to seize in this case.

5 And our position, Your Honor, is that the
6 list of items that controls is actually in the face of
7 the warrant, which is -- it was attached to the motion
8 to suppress as Exhibit 1, and the page I'm referring
9 to, Your Honor, would be the first page of that -- the
10 first page of that document.

11 THE COURT: All right. Well, it seems to me
12 we need to have a hearing on this motion. I don't want
13 to do it in pieces. You're going to need the officers
14 here; is that right?

15 MR. BURKE: He is here, Your Honor.

16 THE COURT: He's here?

17 MR. BURKE: Yes.

18 THE COURT: Are you ready to proceed today on
19 this?

20 MR. BURKE: We are, Your Honor.

21 THE COURT: Okay. All right. Why don't we
22 take a short recess, and then we'll proceed with this.

23 Let me just make clear what I want, and it
24 seems to me straightforward. If you think there's some
25 conflict or some complexity that I'm not appreciating,

1 what I want designated as to each count is the images
2 that are being charged under that count and the device
3 that are associated with those images.

4 MR. BURKE: Your Honor, may I be briefly
5 heard on that issue?

6 THE COURT: Yes.

7 MR. BURKE: Your Honor, unlike some of the
8 cases that may have come before the Court, in this
9 case, the defendant has -- has quite a volume of child
10 pornography, all of which could -- could constitute
11 evidence of these -- of these offenses. So designating
12 it all would be effectively impossible. What we can do
13 is designate representative portions that the
14 government chooses from. I would note --

15 THE COURT: I assume you're going to decide
16 what you're going to be presenting at trial.

17 MR. BURKE: We are, Your Honor, but the case
18 law is clear that the government is not required to
19 produce an advance exhibit list for defense.

20 THE COURT: I understand. But out of this
21 volume, from what I understand, I think in fairness,
22 you need to at least segregate as to count what images
23 fall within each count and which devices are associated
24 with each count.

25 MR. BURKE: Your Honor, we have made the

1 devices available to the defendant, and we've offered
2 to walk them through all of the evidence. The courts
3 have held that that is the best way of the defense
4 making themselves apprised of the evidence.

5 They -- his expert -- they were only there
6 for a couple of hours. They could be there for as long
7 as they'd like. They can examine every device top to
8 bottom with an expert for days, weeks, whatever they'd
9 prefer. They are electing not to do that.

10 THE COURT: Well, without limiting the
11 government, what's the difficulty in simply identifying
12 as to each count which images fall within each count?

13 MR. BURKE: Because, Your Honor, we did not
14 charge --

15 THE COURT: I assume you've done that
16 analysis yourself.

17 MR. BURKE: We have not selected yet, Your
18 Honor --

19 THE COURT: I understand that.

20 MR. BURKE: -- exactly the ones --

21 THE COURT: You haven't grouped them by
22 count?

23 MR. BURKE: Your Honor, there is so much
24 evidence per count that we haven't -- to do that would
25 be effectively impossible. So when we get closer to

1 trial, we'll go and identify representative exhibits
2 that we will then present to the jury. We intend to
3 offer testimony that there are many, many, many, many
4 more images that could constitute substantive evidence
5 of the offenses. And then we'd submit the devices to
6 the jury so that the jury, if they'd like, could get an
7 expert in here and go through it top to bottom if
8 they'd like to. So that's typically how we proceed in
9 these cases, and so a bill of particulars is quite
10 unusual in a child pornography case.

11 THE COURT: Well, let me do this: Why don't
12 you do the reverse proffer --

13 MR. BURKE: Okay.

14 THE COURT: -- that you've talked about.

15 And then ten days before trial, I do want a
16 designation as to count of which images are going to be
17 presented.

18 MR. BURKE: I understand, Your Honor.

19 I will say one thing with respect to Count 3,
20 that's an attempt count. So there may not be --

21 THE COURT: All right.

22 MR. BURKE: -- substantive images with
23 respect to Count 3.

24 Count 4 is a promotion and solicitation
25 count. So for those counts, it's -- the crime is the

1 defendant's solicitation of the content, not the
2 content itself.

3 THE COURT: All right.

4 MR. BURKE: So I'll just clarify that.

5 But yes, Your Honor, I think that that makes
6 sense.

7 THE COURT: All right. Let's do it that way.
8 Mr. Gorokhov.

9 MR. GOROKHOV: Your Honor, just briefly, and
10 I apologize. And, again, I appreciate the offer of the
11 reverse proffer, and we'll take that offer. It's
12 something I would never decline.

13 But just as a practical matter, Your Honor,
14 what we have here -- and I have spoken to my expert
15 about this. For him, he said it would take just
16 hundreds of hours to go through, and that's a lot of
17 money to pay an expert for something that the
18 government ultimately has to do before trial anyway.

19 They're ultimately going to have to decide:
20 This is what we're going to show the jury. It's work
21 that they're ultimately going to have to do anyway,
22 Your Honor, and they've had this case for over a year
23 now.

24 So, really, what we're going to be doing is
25 spending a lot of CJA funds to have an expert going

1 through a computer looking at things the majority of
2 which are just log files that don't even have an image
3 attached to it.

4 The other issue here, Your Honor, is that,
5 you know, there's -- there's a lot of cases, especially
6 in the white-collar context, where courts have required
7 the government in complex cases with a lot of documents
8 to turn over what they're going to use prior to trial
9 in a much longer period of time prior to trial. And I
10 think this case is exactly analogous to that,
11 particularly, also, because I don't have the assistance
12 of my client, Your Honor.

13 THE COURT: All right. Well, I am going to
14 adhere to what I've indicated, which is I want you to
15 do a reverse proffer. By reverse proffer, I'm
16 expecting this to be pretty specific, as best you can
17 at this point, of what images you're going to be
18 presenting. I don't need the logs. Cut through the
19 logs. Show the images and the devices. And then ten
20 days before trial, I do want what you're going to
21 introduce at trial by way of your case in chief as far
22 as the images on each of the counts.

23 MR. BURKE: Understood, Your Honor, with the
24 understanding those are representative samples and not
25 all the substantive evidence for each count.

1 THE COURT: Well, I understand that.

2 MR. BURKE: Okay.

3 THE COURT: But the representative samples
4 are what you're going to be introducing, I take it.

5 MR. BURKE: Yes, Your Honor.

6 THE COURT: All right.

7 MR. BURKE: All right. Thank you.

8 THE COURT: All right. Let me just for the
9 record overrule what was filed by Mr. Sueiro as to his
10 motion to dismiss based on the Speedy Trial Act. The
11 motion to dismiss in this case was filed in April of
12 last year. There's also been mental examinations down
13 in Butner that have tolled the statute, and there's no
14 speedy trial issue in this case.

15 All right. Let's take a short recess. Then
16 we'll proceed with the motion to dismiss.

17 (Recess from 11:23 a.m. until 11:40 a.m.)

18 (The defendant is not present.)

19 THE COURT: Before we begin, I understand you
20 passed on to Mr. Sueiro the Court's communication that
21 he could return here and rejoin us if he was prepared
22 not to be disruptive. Is that correct?

23 THE MARSHAL: Yes, sir.

24 THE COURT: Why don't you for the record tell
25 us his response.

1 THE MARSHAL: Right. The only thing he would
2 say in response is that he was exercising his legal
3 right to represent himself. And when asked if he would
4 continue to speak the same way he did during his last
5 appearance here, he really wouldn't answer that. He
6 just continued to say it was his right to represent
7 himself and his right to be here. He really did not
8 elaborate as to how he would conduct himself if he came
9 back up here.

10 THE COURT: All right. Thank you.

11 THE MARSHAL: Yes, sir.

12 THE COURT: All right. Are you ready to
13 proceed?

14 MR. BURKE: Yes, Your Honor.

15 THE COURT: All right. Counsel.

16 MR. BURKE: Your Honor, the government calls
17 Detective Trey Leightley.

18 THE COURT: All right. Detective Leightley.

19 ALBERT LEIGHTLEY, PLAINTIFF'S WITNESS, AFFIRMED

20 DIRECT EXAMINATION

21 BY MR. BURKE:

22 Q Detective Leightley, can you please state and
23 spell your name for the record?

24 A My first name is actually Albert, A-L-B-E-R-T. My
25 last name is Leightley spelled L-E-I-G-H-T, as in Tom,

1 L-E-Y.

2 Q Detective Leightley, where are you employed?

3 A I am with the Fairfax County Police Department.

4 Q How long have you worked there?

5 A Almost 26 and a half years.

6 Q What is your current position there?

7 A I specialize in two things, computer forensics,
8 digital evidence, as well as I.T., processing major
9 crime scenes for the City of Fairfax.

10 Q Have you investigated crimes related to threats of
11 harm to people?

12 A Yes, in regards to myself, as well as to the
13 forensic analysis that other people give me, doing the
14 forensic analysis.

15 Q Can you estimate for me about how many threats
16 cases you've investigated or participated in?

17 A It's increased greatly since the Twitter cases and
18 threats to schools. So right now about 10 to 15
19 recently.

20 Q Have you investigated crimes related to child
21 exploitation offenses to include child pornography
22 cases?

23 A Yes. I'm a trained forensic examiner. I've been
24 trained by the federal government, HSI, and I do
25 computer forensics work for Charlottesville, UVA.

1 Fairfax County brings me their stuff, and I've done
2 roughly about 40 to 50 cases of child pornography.

3 Q I'm sorry. Did you say 40 to 50?

4 A Forty to fifty approximately.

5 Q All right. What are your duties and
6 responsibilities in having this job?

7 A Primarily is to assist in the collection of the
8 evidence at the location of the search warrants if it
9 involves digital evidence, and then I bring the digital
10 evidence back to my lab. At that point in time, I
11 conduct a forensic analysis of the digital evidence.

12 Q Do your duties and responsibilities include
13 obtaining, swearing out, and executing search warrants?

14 A Yes, sir.

15 Q If you had to say approximately how many search
16 warrants you've executed in your career, how many would
17 that be?

18 A Over a hundred.

19 Q As part of your duties and responsibilities, are
20 you familiar with the investigation of Christopher
21 Robert Sueiro?

22 A Yes, sir.

23 Q Is the information you're going to provide the
24 Court today the result of that investigation?

25 A Yes, sir.

1 Q Have you learned this information either directly
2 from your own involvement or from other law enforcement
3 officers or witnesses?

4 A Yes, sir.

5 Q Am I correct in understanding that you're not
6 going to present to the Court today all of the relevant
7 information you've learned throughout the course of
8 this investigation?

9 A Yes, sir.

10 Q Can you please describe for the Court how the
11 Sueiro state investigation started?

12 A It was a joint investigation between the City of
13 Fairfax and Prince William County. I was asked by my
14 supervisor to assist in obtaining a search warrant for
15 evidence relating to the threats that were sent via
16 e-mail, and I assisted in obtaining that search
17 warrant.

18 Q Can you tell the Court a little bit about the
19 threats case initially?

20 A The threats case involved a coworker. Mr. Sueiro
21 worked at what is called the Best Western in the city
22 of Fairfax. And he had sent repeatedly long e-mails
23 saying how he was going to kill his coworker, and this
24 is done via e-mail.

25 Q Did you review these threatening e-mails prior to

1 obtaining a search warrant for Mr. Sueiro's home?

2 A Yes. I brought the victims back into
3 headquarters, conducted another interview, and they
4 provided me with the e-mails.

5 Q Did law enforcement officials obtain an arrest
6 warrant for the defendant?

7 A Both Fairfax City and Prince William County had.

8 Q Do you recall when they executed that arrest
9 warrant?

10 A Approximately November 5, I believe.

11 Q Did you procure a search warrant for his residence
12 based on the threatening e-mails?

13 A Yes.

14 Q This was after the arrest warrant was executed?

15 A Yes.

16 Q So the defendant was not in the home?

17 A No.

18 Q I'm showing you what's previously been marked --
19 Excuse me.

20 MR. BURKE: The Court's indulgence.

21 BY MR. BURKE:

22 Q -- as Government Exhibit 1 with the assistance of
23 the court security officer.

24 MR. BURKE: Your Honor, I have a copy for the
25 Court.

1 THE COURT: All right.

2 BY MR. BURKE:

3 Q Would you take a moment to review that and let me
4 know --

5 A Yes. Yes, sir.

6 Q Can you tell the Court what that is?

7 A What this is is my initial search warrant. It's
8 an affidavit with regards to my probable cause in
9 relations to executing the search warrant for the home
10 associated with Mr. Christopher Sueiro.

11 Q So this is the first search warrant you obtained
12 in this case?

13 A Yes, sir.

14 MR. BURKE: Your Honor, I'd ask that
15 Government Exhibit 1 be admitted into evidence.

16 THE COURT: Any objection?

17 MR. GOROKHOV: No, sir.

18 THE COURT: Without objection, Government
19 Exhibit 1 is admitted.

20 BY MR. BURKE:

21 Q Detective Leightley, can you please describe
22 briefly for the Court how you go about obtaining search
23 warrants in your jurisdiction?

24 A At first we type out a long affidavit. It's a
25 probable cause statement. And then what I do is then

1 fill out -- there's two forms associated. There's an
2 affidavit form, and then there's a search warrant form.
3 I fill in the blocks that are in that form, and then
4 after that, I bring it over to the magistrate's office.
5 The magistrate's office then reviews the search warrant
6 and decides whether or not to sign off on the search
7 warrant.

8 Q Detective Leightley, please look at the second
9 page of Government's Exhibit 1.

10 A Yes.

11 Q It's marked as page 2 at the top.

12 A Yes.

13 Q Is that the form that you filled in -- I'm
14 sorry -- the search warrant form that you filled in?

15 A Yes.

16 Q Did you fill in the empty fields on that form?

17 A Yes.

18 Q Did those fields that you filled out include the
19 property you were seeking to search?

20 A Yes.

21 Q Did you fill out any fields about what crime you
22 were investigating?

23 A Yes.

24 Q And that's also on there?

25 A Yes.

1 Q In Government's Exhibit 1, what property were you
2 seeking to search?

3 A Ballistic equipment. That included vests -- a
4 ballistic vest and a ballistic helmet, firearms,
5 documents, and digital evidence, specifically
6 computers, cell phones.

7 Q On that form, what crimes did you list that you
8 were seeking that property to find evidence of?

9 A Violation of 18.2-60 of Code of Virginia, threats
10 of death or bodily injury.

11 Q And is all that information on this page of the
12 warrant?

13 A Yes.

14 Q Detective Leightley, was this search warrant
15 accompanied by the attached affidavit when you swore it
16 out?

17 A Yes.

18 Q I'm sorry. I need to go back to the warrant.

19 On page 2 again, Detective Leightley, did you name
20 the defendant on that page of the warrant?

21 A Yes. It says in the -- over on the right-hand
22 side, in reference to Mr. Christopher Sueiro, and it
23 has the address.

24 Q Detective Leightley, was the accompanying -- was
25 this search warrant you filled out that you were just

1 describing accompanied by an attached affidavit when
2 you swore it out?

3 A Yes.

4 Q That's the affidavit that's part of Government's
5 Exhibit 1?

6 A Yes.

7 Q Does this search warrant authorize you to seize
8 and search electronic devices in the defendant's home?

9 A Yes.

10 Q Did you participate in the execution of this first
11 warrant at the defendant's residence?

12 A Yes.

13 Q Where did you search that day?

14 A Primarily, the evidence was in a room associated
15 with Mr. Christopher Sueiro, as well as a common area.
16 He had belongings that were in a living room and in the
17 dining room.

18 Q And what did you seize?

19 A I seized digital evidence, laptop computers,
20 external hard drives, a firearm, a ballistic vest, and
21 a ballistic helmet.

22 Q How many relevant devices did you find in
23 Mr. Sueiro's bedroom?

24 A Five.

25 Q Okay. Did you obtain a second search warrant in

1 this case?

2 A Yes.

3 Q All right. I'm showing you with the assistance of
4 the court security officer what's been previously
5 marked as Government Exhibit 2.

6 Did you seize any devices that belonged to the
7 roommates, the other people who lived in the home?

8 A No.

9 MR. BURKE: Your Honor, I have a copy for the
10 Court if you would like.

11 THE COURT: All right. Any objection?

12 MR. GOROKHOV: No objection, Your Honor.

13 THE COURT: Without objection, is this
14 Government Exhibit 2?

15 MR. BURKE: Yes, Your Honor.

16 THE COURT: All right. It's admitted in this
17 hearing.

18 BY MR. BURKE:

19 Q Detective Leightley, once you've reviewed that,
20 please let me know, and I'll continue my questioning.

21 A Okay. This is the second search warrant I
22 obtained. The evidence that was collected at the scene
23 was placed into property. I then obtained a secondary
24 search warrant in order to conduct an analysis of the
25 digital evidence associated with what was seized at the

1 home.

2 MR. BURKE: Now, I believe the Court has
3 already done this, but just for the record, I would ask
4 that this be admitted into evidence.

5 THE COURT: It's admitted.

6 MR. BURKE: Okay.

7 BY MR. BURKE:

8 Q Does the search warrant -- does this search
9 warrant, known as Exhibit 2, describe the property you
10 aimed to search?

11 A Yes.

12 Q Does it also describe the crime that you wanted to
13 search for evidence of?

14 A Yes.

15 Q Was this search warrant accompanied by an attached
16 affidavit when it was sworn out?

17 A Yes.

18 Q Why did you obtain the second search warrant?

19 A It was out of an abundance of caution. At the
20 time, it was -- it was an abundance of caution. At the
21 time, there were rumors going around through the
22 circuit court that suppression motions were being
23 filed, that, well, you've got the right to seize it but
24 then you didn't have the right to analyze it. So it
25 was under an abundance of caution to prevent another --

1 a suppression hearing that I got a secondary search
2 warrant on the specific items that I had seized.

3 Q It is still your practice to get these
4 abundance-of-caution ones?

5 A No. The magistrates prefer I don't do that.

6 Q Did the first search warrant authorize you to
7 search these devices?

8 A Yes.

9 THE COURT: Who actually prepared these
10 search warrants?

11 THE WITNESS: I did, Your Honor.

12 BY MR. BURKE:

13 Q Did you execute these warrants on the defendant's
14 devices at some point?

15 A Yes.

16 Q And that was to search for what sort of evidence?

17 A Evidence related to the crimes of threats to kill.

18 Q Can you describe what happened next?

19 A I created a forensic image of the machine. I
20 placed it into my forensic software. I then looked
21 through a folder within that device in My Documents, My
22 Pictures folder, and I saw evidence related to
23 prepubescent boys.

24 Q So is it your testimony you discovered child
25 pornography in the course of executing a search?

1 A Yes, sir.

2 Q What did you do after you discovered the child
3 pornography?

4 A I stopped, and then I obtained another search
5 warrant so that I could continue my analysis.

6 Q That's because you did not specifically have
7 probable cause to search for child pornography at this
8 point, right?

9 A Anything that I was looking for specifically in
10 regards to threats. I couldn't do any keyword
11 searches, hashtags related to child pornography.

12 MR. BURKE: Your Honor, with the assistance
13 of the court security officer, I'm introducing
14 Government's Exhibit 3.

15 THE COURT: All right.

16 BY MR. BURKE:

17 Q Detective Leightley, once you've reviewed that,
18 please let me know.

19 A Again, this is the search warrant that I
20 obtained -- I'm sorry.

21 Q What -- please describe it.

22 A It's a search warrant that I obtained in regards
23 to the -- now changing it from crime of threats to
24 violent harm, conduct forensic analysis on production
25 of child pornography.

1 MR. BURKE: Your Honor, for the purpose of
2 this hearing, I ask that Government's Exhibit 3 --

3 THE COURT: Any objection?

4 MR. GOROKHOV: No.

5 THE COURT: Without objection, Exhibit 3 is
6 admitted.

7 BY MR. BURKE:

8 Q Detective Leightley, does that search warrant
9 describe the property you wanted to search?

10 A Yes.

11 Q Does it also describe the crime you wanted to
12 search for evidence of?

13 A Yes.

14 Q What crime is that?

15 A Now, it's changed from -- well, I still had the
16 one threats to bodily kill, but this one specifically
17 allowed me to also search for crimes involving
18 production and possession of child pornography.

19 Q And is the defendant's name on the face of that
20 warrant with respect to those crimes as well?

21 A Yes.

22 Q Detective Leightley, did an affidavit accompany
23 this search warrant when you swore it out?

24 A Yes.

25 Q Did law enforcement obtain any other devices from

1 the defendant's residence that you did not seize during
2 the execution of the residential search warrant?

3 A Yeah. Approximately -- let's me see -- November,
4 December, January -- February I was contacted by
5 detective -- I mean officer -- officer -- the roommate,
6 Mr. Benson. Mr. Benson was in the process of with
7 Mr. Sueiro's brother cleaning out his items from the
8 residence. He found within the items in the living
9 room a box. In the box was an external hard drive.
10 Mr. Benson decided to hook that device up to his
11 computer, and he immediately noticed child pornography.
12 He contacted me. I went to the residence, and I seized
13 that device.

14 Q Did you obtain a separate search warrant for that
15 device before you examined it?

16 A Yes.

17 MR. BURKE: With the assistance of the court
18 security officer, Your Honor, I'm handing up
19 Government's Exhibit 4.

20 THE COURT: All right.

21 BY MR. BURKE:

22 Q Detective Leightley, once you've reviewed that,
23 please let me know.

24 A Yes. This is the search warrant associated with
25 the external hard drive that was brought to me and

1 placed into evidence.

2 Q Does that search warrant describe the property you
3 wanted to search?

4 A Yes.

5 Q Does it describe also the crime you wanted to
6 search it for evidence of?

7 A Yes.

8 Q Does it have the defendant's name on it?

9 A Yes.

10 MR. BURKE: Your Honor, I'd ask that
11 Government's Exhibit 4 be admitted.

12 THE COURT: Any objection?

13 MR. GOROKHOV: No objection.

14 THE COURT: Without objection, Government's
15 Exhibit 4 is admitted.

16 BY MR. BURKE:

17 Q Detective Leightley, did an affidavit accompany
18 this search warrant when you swore it out?

19 A Yes.

20 Q Did you execute this warrant?

21 A Yes.

22 Q Were any federal search warrants obtained in this
23 case?

24 A Yes.

25 Q Did you assist in drafting a federal search

1 warrant and an affidavit that accompanied it?

2 A Yes.

3 Q Did you swear out that warrant itself?

4 A No.

5 Q But you reviewed the warrant and the affidavit
6 before it was sworn out; is that correct?

7 A Yes.

8 Q Did you -- did it appear to be accurate and to the
9 best of your knowledge and belief at that time?

10 A Yes.

11 MR. BURKE: All right. With the assistance
12 of the court security officer, Your Honor, I'm handing
13 up Government's Exhibit 5.

14 BY MR. BURKE:

15 Q Detective Leightley, once you've reviewed that,
16 please let me know.

17 A This is the affidavit in support of the search
18 warrant that was sworn out by Special Agent Cormick
19 (phonetic) and that I reviewed. I think she now goes
20 by the name of Honicker.

21 Q Spelled H-O-N-I-C-K-E-R?

22 A Yes.

23 MR. BURKE: Your Honor, I would ask that
24 Government's Exhibit 5 be admitted into evidence.

25 THE COURT: Any objection?

1 MR. GOROKHOV: No objection.

2 THE COURT: Without objection, Exhibit 5 is
3 admitted.

4 BY MR. BURKE:

5 Q Detective Leightley, does Government's Exhibit 5
6 appear to be the same affidavit you reviewed for the
7 federal search warrant that was obtained in this case?

8 A It does.

9 Q Detective, when you executed the state search
10 warrants in this case, did you perceive any defects in
11 them?

12 A No.

13 Q Any errors?

14 A No.

15 Q Were you aware of any reason why any of the
16 magistrates before whom you appeared might have an
17 improper motive in granting these warrants to you?

18 A No.

19 Q What was your belief about the validity of these
20 warrants when you executed them?

21 A That they were valid.

22 MR. BURKE: I have no further questions, Your
23 Honor.

24 THE COURT: All right. Mr. Gorokhov.

25 MR. GOROKHOV: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. GOROKHOV:

3 Q Good afternoon, Detective Leightley.

4 A Yes, sir.

5 Q I have a couple of preliminary questions about the
6 threats case with respect to Mr. Sueiro.

7 A Okay.

8 Q So when did you first learn about the alleged
9 threats that Mr. Sueiro sent to his coworker?

10 A It was about two or three days, I believe,
11 approximately afterwards. This was initially handled
12 by both Fairfax City and Prince William patrol
13 officers. So I came in -- within a day or so my
14 supervisor asked me if I could assist in obtaining
15 digital evidence associated with these incidents.

16 Q Okay. Now, you became familiar with the facts of
17 those threats, right?

18 A Correct. I met with Ms. Olsen and Mr. Olsen.
19 They came to my headquarters. And I interviewed them,
20 and they provided me with the e-mails.

21 Q Okay. You learned as a part of that investigation
22 that they were threats sent by e-mail, correct?

23 A Yes.

24 Q The message containing the alleged threat was in
25 the body of the e-mail itself, right?

1 A Yes.

2 Q There was no information to your knowledge that
3 Mr. Sueiro sent a threatening text, for example, to
4 anybody, right?

5 A A text message? No.

6 Q And there was no information that Mr. Sueiro sent
7 a written threat to anybody, right? I mean like a
8 letter. When I say "written," I mean outside of
9 e-mail.

10 A You mean like an attachment or Word document
11 attachment, that sort of thing?

12 Q Yes.

13 A No.

14 Q Or that he mailed a hard copy letter threat to
15 anybody, right?

16 A No. He's mailed letters but not threats. He's
17 mailed letters to different people but not threats.

18 Q Okay. That was -- in fact, he's mailed a letter
19 to Ms. Olsen, but that was after the execution of the
20 search warrant in this case, right?

21 A Yes, sir.

22 Q Okay. Now, in terms of the arrest warrant, the
23 initial arrest warrant for Mr. Sueiro was obtained by
24 Prince William County; is that right?

25 A I believe they were obtained simultaneously

1 between the Fairfax City patrol officer and Prince
2 William County officer. Who got the initial one, I
3 can't remember.

4 Q Okay. And is it in your affidavit, though, that
5 the -- that the arrest warrant against Mr. Sueiro was
6 obtained by Prince William County? Is that something
7 you put in your affidavit?

8 A I believe so, yes.

9 Q Okay. And, in fact, your affidavit reflects that
10 it was obtained on November 2, 2014; is that right?

11 A Yes.

12 Q And that was the date the first threatening
13 message to Ms. Olsen was sent, correct?

14 A Yes.

15 Q But the arrest warrant was not executed until
16 three days later on November 5; is that right?

17 A Yes.

18 Q 2014, correct?

19 A Yes.

20 Q Okay. Now, directing your attention to the actual
21 investigation you conducted in this case, prior to
22 obtaining the warrant in this case, can you just give
23 me an idea of the investigation that you conducted?

24 A I met with the victims. I went over the e-mails.
25 I discussed what was the -- what was the rationale for

1 why these e-mails were sent. I asked, Do you recognize
2 the e-mail account that it was sent from? And she said
3 yes, and she provided me with the e-mails.

4 Q Okay. Now, aside from talking to the recipient of
5 the e-mails, you also spoke with Daniel Benson; is that
6 right?

7 A Correct.

8 Q And Daniel Benson was a person who was the
9 landlord of the house that Mr. Sueiro rented a room in?

10 A Yes, sir.

11 Q And did you go to speak with Mr. Benson at that
12 residence?

13 A Yes.

14 Q And, in fact, Mr. Benson resides there too; does
15 he not?

16 A Yes. I believe he's the homeowner, and he lives
17 there as well.

18 Q Okay. That was on November 6, 2014, correct?

19 A Yes.

20 Q And on that date, Mr. Benson told you a couple of
21 things about Mr. Sueiro, right?

22 A Yes. He said that he had a room that was in the
23 upstairs, as well as he had possessions that were in
24 the living room.

25 Q Okay. Did he tell you also that Mr. Sueiro had a

1 computer in his room? Did he not?

2 A Yes.

3 Q And he told you that computer was connected to the
4 Internet, correct?

5 A Yes.

6 Q He also told you that Mr. Sueiro had a ballistic
7 vest, I believe. Right?

8 A Yes.

9 Q And that Mr. Sueiro owned a handgun?

10 A Yes.

11 Q He specified -- I believe you already said this,
12 but I just want to make sure the record was clear. He
13 specified that Mr. Sueiro rented a room in that
14 residence, correct?

15 A Yes.

16 Q Now, I want to ask you about the -- about some of
17 the items that appear on the warrant itself. Now, do
18 you need a copy of it to --

19 A I have them here.

20 Q Oh, you do have it. Okay. So this would be
21 Government's Exhibit 1, and I'm referring now to
22 Attachment C.

23 A Yes, sir.

24 Q Now, prior to obtaining the warrant -- I
25 apologize. So Attachment C is before you now?

1 A Yes. Attachment C, a list of items to be seized.

2 Q Right. Exactly.

3 Now, before obtaining this warrant in this case,
4 did you get information from Mr. Benson that
5 Christopher Sueiro owned a mobile phone?

6 A No. I believe Ms. Olsen did not believe he owned
7 one.

8 Q Okay. So, in fact, the information you had was
9 that Mr. Sueiro did not own a mobile phone?

10 A They did not know that, if he did or didn't, but
11 they were under the impression that he did not.

12 Q That he did not. Okay.

13 And did you receive information from Mr. Benson,
14 Ms. Olsen, or anyone else that Mr. Sueiro owned a GPS
15 device?

16 A A GPS device? No.

17 Q Did you receive information from Mr. Benson,
18 Ms. Olsen, or -- and I understand that it's a lot of
19 people but basically from anybody --

20 A Right.

21 Q Did you receive information that Mr. Sueiro owned
22 a printer?

23 A A printer? No. I didn't ask about printers.

24 Q Okay. Did you receive any information that
25 Mr. Sueiro owned a DVD, that he owned DVDs?

1 A I did not ask that question.

2 Q Okay. And finally -- I'm not going to go through
3 this whole list -- but did you receive information from
4 any witnesses that Mr. Sueiro owned digital media
5 storage devices, external hard drives, in other words?

6 A Other than computers, that's the only thing I
7 knew.

8 Q You only knew that he had a computer; is that
9 right?

10 A Yes.

11 Q Okay. Now, I'm going to ask you about the
12 actual -- when you swore out the warrant in this case.
13 Your testimony was that you filled out both the warrant
14 and prepared the affidavit in support of the warrant,
15 right?

16 A Yes, sir.

17 Q So the language that appears on the face of the
18 warrant in this case was not prepared by the magistrate
19 judge. It was actually written by you but approved by
20 the magistrate judge?

21 A Yes. That's how it's done in Fairfax.

22 Q Okay. Now, I want to ask you about the execution
23 of the search warrant in this case. That happened on
24 the following day, on November 7, 2014, correct?

25 A Yes, sir.

1 Q And on that day, were you the one -- strike that.

2 You participated in that search, correct?

3 A Yes, sir.

4 Q Who did you present the search warrant to?

5 A After it was -- explain what that meant, in
6 particular.

7 Q Okay. Well, let's back up. So in order to
8 execute the search, you went to the residence where
9 Mr. Sueiro lived, right?

10 A I laid a copy of that search warrant in the house.

11 Q You laid a copy in the house?

12 A Yes, sir.

13 Q Okay. What did that search warrant -- what did
14 that search warrant look like when you laid it in the
15 house?

16 A Exactly what you have, including an inventory
17 sheet.

18 Q Okay. So it had the warrant, an inventory sheet.
19 Anything else?

20 A The affidavit.

21 Q The affidavit was attached to that warrant --

22 A Yes.

23 Q -- at the time it was --

24 A Yes.

25 Q -- executed?

1 A Yes.

2 Q Okay. Now, during the search, in fact, Daniel
3 Benson -- you relied on Daniel Benson to show you where
4 Mr. Sueiro's room was, right?

5 A Uh-huh, yes.

6 Q Okay. Now, you testified about some of the items
7 that were seized in this case, and I want to ask you in
8 particular about documents. One of the categories of
9 items that you seized in this case were paper
10 documents, right?

11 A Correct.

12 Q And can you give this Court a description of what
13 paper documents were seized?

14 A I'm just going from memory, but I know there was
15 a -- one or two documents about -- they printed out in
16 regards to missing some sort of *Star Wars* book as I
17 remember.

18 Q Okay.

19 A That's the one that sticks out more than anything.

20 Q Okay. And did you seize all of the paper
21 documents in his room?

22 A Every single one, no.

23 Q Okay. Did you -- how did you determine which
24 documents you would seize?

25 A If they were affiliated with either -- looking for

1 if there were any bills in regards to Internet or --
2 any -- any bills or whatever associated with -- if he
3 was paying for the bills for the Internet or if it was
4 specifically anything related to the Best Western.

5 Q Okay. And that *Star Wars* -- *Star Wars* book you --
6 or the *Star Wars* document you seized, was that related
7 to the Best Western?

8 A Yeah. It claims that someone may have stolen his
9 *Star Wars* book, and he had printed out a letter. I
10 think he may have posted it at the Best Western.

11 Q Now, when you were making a determinative -- a
12 determination of what documents to seize and you talked
13 about things related to work and things related to
14 Internet, how did you make that determination?

15 A I was probably putting it more into context as
16 work and to his employment at the Best Western. That's
17 what I was strictly looking at. Or if there were any
18 e-mails that had been printed out or any documents with
19 Mr. and Mrs. Olsen's name on it.

20 Q Okay. So is it fair to say you kind of had to use
21 your judgment when you were seizing documents?

22 A When it comes to documents, yes.

23 Q You had to rely on your judgment?

24 A Yes.

25 Q Okay. Now, I want to ask you about the forensics

1 warrant in this case, which is the Government's
2 Exhibit 2.

3 A Yes.

4 Q And I want to -- first of all, I want to ask you
5 about --

6 MR. GOROKHOV: The Court's indulgence, Your
7 Honor.

8 I apologize for that.

9 BY MR. GOROKHOV:

10 Q Going back to your investigation of the -- of the
11 threats in this case, did you find -- in your
12 investigation find out that Mr. Sueiro -- prior to the
13 execution of the search warrant in this case, did you
14 find information that Mr. Sueiro was searching for
15 Ms. Olsen's address?

16 A I just -- Google searches -- as I remember -- I'd
17 have to go back through, but I know specifically it was
18 Facebook searches in regards to Tiffany Olsen.

19 Q Okay. I just want to be clear here. This is
20 before -- I'm talking about the time period before you
21 looked at any computers.

22 A So -- no, I would not be able to do that.

23 Q Okay. So you did not receive information, for
24 example, from Tiffany Olsen or -- Tiffany Olsen --

25 I believe her name was Tiffany, right?

1 A Yes.

2 Q -- or any other witness that Mr. Sueiro was
3 looking for her address, for example?

4 A No. And basically, most of this is based on
5 e-mails when he kept referring to what is called "the
6 plan."

7 Q Okay.

8 A In terms of the plan, you'd think okay, what does
9 a person do in order to plan to accomplish their -- you
10 know, in this case, threats to kill. You know, are
11 they going to do surveillance? Are they going to go by
12 the house, that sort of thing. Everything was
13 referencing to the e-mails themselves.

14 Q Okay. Now, did you have any information that
15 Mr. Sueiro, in fact, had images of Ms. Olsen --
16 possessed images of Ms. Olsen?

17 A Prior to the analysis?

18 Q Correct.

19 A No.

20 Q Did you have any information from your
21 investigation that Mr. Sueiro had Ms. Olsen's address
22 or anything like that in his contacts?

23 A No. Again, it all reverted back to the plan, what
24 he stated in the e-mails that he had a plan and that he
25 was going to carry it out, that's what I -- based on

1 training and experience that this person would take to
2 this level.

3 Q Okay. Did you have any information that
4 Mr. Sueiro was having created, printed, or written
5 materials that would reflect a plan to harm Ms. Olsen?

6 A Did I -- no. It was just -- everything was based
7 off of the content and the verbiage of the e-mails.

8 MR. GOROKHOV: Okay. Your Honor, at this
9 time, that's all I have.

10 THE COURT: All right. Any redirect?

11 MR. BURKE: No, Your Honor.

12 THE COURT: All right. Detective, let me ask
13 this: I take it that when you conducted these
14 searches, you searched, as I understand your testimony,
15 the room you understood Mr. Sueiro was renting as the
16 bedroom and then the common areas; is that right?

17 THE WITNESS: Yes. There was a living room
18 where he had stored a lot of packages, and then there
19 was a dining room table which he periodically,
20 supposedly, would work at with his computer. And there
21 was a device that was sort of crusted into the dining
22 room table that belonged to him.

23 THE COURT: Did you search any other
24 bedrooms?

25 THE WITNESS: No.

1 THE COURT: All right. Thank you.

2 May the detective be excused?

3 MR. BURKE: Yes, Your Honor.

4 THE COURT: All right. You're excused.

5 MR. BURKE: No further witnesses from the
6 government.

7 THE COURT: All right. Thank you for
8 appearing.

9 (The witness stands aside.)

10 THE COURT: All right. Mr. Gorokhov,
11 anything you want to present?

12 MR. GOROKHOV: Yes, Your Honor, if I may
13 proceed with argument.

14 THE COURT: Yes.

15 MR. GOROKHOV: Thank you.

16 Your Honor, I think the threshold question in
17 this case is what language -- in terms of the probable
18 cause and the overbreadth of the warrant, what language
19 should we be looking at? Should we be looking at the
20 language on the face of the warrant, or should we be
21 looking at the language in the affidavit? Because the
22 language in the affidavit is actually different than
23 the language on the face of the warrant.

24 I recognize that the Fourth Circuit case law
25 says that either -- if the face of the affidavit

1 incorporates -- the face of the warrant incorporates
2 the affidavit or the affidavit is attached, as we've
3 heard today, it can be incorporated. But I would first
4 point out that there is a conflict between the face of
5 the warrant and the list -- the -- the affidavit list
6 that's attached.

7 And, Your Honor, under either scenario, I
8 would submit to this Court that the warrant in this
9 case was exceedingly overbroad and went far beyond a
10 narrow probable cause that it was based on. And I
11 can -- I can go into detail on that, but I think it --
12 it would be helpful to have a target to shoot at in
13 terms of whether it's the face of the warrant or the
14 affidavit in this case. In either case, it's
15 overbroad, and I can discuss why.

16 THE COURT: I think under the case law you
17 mentioned that the Court is going to judge the
18 particularity of the sufficiency of the search warrant
19 based on both the face of the search warrant and the
20 affidavit.

21 MR. GOROKHOV: Right. Together, Your Honor?

22 THE COURT: Together, yes.

23 MR. GOROKHOV: Your Honor, at this point,
24 then I'll go to the -- to the overbreadth and probable
25 cause points. So I'll just start by giving this Court

1 a few examples.

2 First of all, in terms of the documents to be
3 seized in this case, as Detective Leightley testified
4 and as the warrant reflects, there really wasn't any
5 limitation on the documents to be seized. We know that
6 both from the way that the warrant was written and from
7 the execution of the warrant. Detective Leightley used
8 his judgment. He used his discretion to take or not
9 take what he thought would help support the case.

10 And even in a case -- a wide-ranging, complex
11 fraud case -- most recently the *Manafort* case decided
12 by Judge Ellis -- we know that there is some kind of a
13 qualification placed on the types of documents to be
14 seized. In that case, it was financial documents,
15 which is a very broad category, but at least they're
16 somehow confined. In this case, the documents were not
17 meaningfully confined, and the officer just kind of
18 took what he thought would help the case.

19 Secondly, Your Honor, there's the issue of
20 ownership. Who owns the limitation on the ownership?
21 Again, the fact that Officer Leightley went to search
22 only in Christopher Sueiro's room or that he got the
23 help of the roommate to only identify items in
24 Christopher Sueiro's room is not the issue.

25 The issue is what does the face of the

1 warrant say, and the face of the warrant plainly
2 authorized the seizure of all items -- all of these
3 broad categories of items in the house.

4 So, for example, they could have taken his
5 roommate's passport if they wanted. They could have
6 taken any roommate's cell phone if they wanted. That's
7 the face of the warrant. That's what this Court has to
8 look at in determining --

9 THE COURT: Well, it does designate the
10 underlying offense that the categories pertain to.

11 MR. GOROKHOV: That's correct, Your Honor.

12 But, for example, in the *Griffith* case, the
13 D.C. Circuit case, they clearly identified that they
14 were looking at one specific person, Griffith, for
15 example, for the crime of murder, but then the search
16 warrant authorized them to take any cell phones in the
17 house belonging to anybody. And the D.C. Circuit
18 specifically said that that's not good enough. And
19 they suppressed the whole warrant. The police in that
20 case didn't even take any cell phones. They just took
21 a firearm. But they suppressed all of the evidence in
22 that case.

23 By contrast, in the *Manafort* case, for
24 example, Your Honor, the defense complained in that
25 case: Why did the police take items belonging or

1 pertinent to the wife? Why did they take, for example,
2 documents pertinent to the wife? And Judge Ellis
3 reasoned that's because the affidavit plainly said why
4 the wife was involved in the accounts or involved in
5 some of the businesses that were at issue in the
6 searches.

7 We don't have anything like that in this
8 case. We have no connection, no nexus to the
9 roommates. And the plain language of the warrant
10 doesn't limit it to Mr. Sueiro's property -- or the
11 plain language of Attachment C, which is the only part
12 that's incorporated into the -- which is the only part
13 that controls what is actually being seized.

14 A further problem, Your Honor -- and I would
15 submit perhaps the biggest problem in this case -- is
16 the fact that the warrant authorized seizure of items
17 that Detective Leightley didn't even have probable
18 cause that Mr. Sueiro owned.

19 So the most prominent example would be the
20 telephone. I asked Detective Leightley if there was
21 any evidence that Mr. Sueiro actually owned a phone.
22 And, in fact, Detective Leightley candidly and very
23 openly answered that the evidence he had actually
24 suggested that Mr. Sueiro did not own a phone. And, in
25 fact, he didn't.

1 So, again, Your Honor, by analogy to the
2 *Griffith* case, the D.C. Circuit case, one of the things
3 that they pointed to in that case was this: You can't
4 just go in saying a person may own a phone. And if he
5 owns a phone, then it's possible that that phone will
6 contain evidence of a crime. You can't go in saying a
7 person may own an external hard drive. And if he does,
8 well, maybe that hard drive has evidence of a crime.
9 That is not -- that does not come close to the kind of
10 showing that needs to be made to establish probable
11 cause to seize these items. So that's yet another
12 issue in this case.

13 Your Honor, the final example I'll give is it
14 has to do with the firearms. The offenses in this case
15 that were listed were e-mail threats. These were very
16 specific threats that were made in the body of an
17 e-mail. They did not list, for example, a suspicion
18 that Mr. Sueiro was planning to commit murder, that
19 Mr. Sueiro was stalking somebody, that Mr. Sueiro was
20 doing any of those things. The only crime listed was
21 the threats, which was completed by the time these
22 warrants -- this warrant was sworn out.

23 And the fact that the government or the
24 police say that, well, we needed to find out whether he
25 had the means to carry out the threat, Your Honor, I

1 think is a -- it's an empty argument for a number of
2 reasons.

3 First of all, there's a problem with that
4 argument in that -- you know, the example I would give
5 the Court is that if the government had suspected
6 someone of a structuring offense -- you know,
7 depositing money, less than \$10,000, right -- and then
8 they got a warrant to seize the person's car because he
9 would need the car to drive to the bank to deposit the
10 money, I mean, that's just far removed from the actual
11 offense that's at issue in the case.

12 Secondly, Your Honor, if they really
13 sincerely believed that Mr. Sueiro intended to -- even
14 if they didn't put it in the warrant but they believed
15 that Mr. Sueiro intended to do something bad to
16 Ms. Olsen, why did they wait three days from the time
17 of obtaining the arrest warrant to the time that
18 Mr. Sueiro was actually arrested on the 5th? I think
19 that just shows, Your Honor, that they didn't put it in
20 this document because they didn't believe that
21 Mr. Sueiro was actually planning to harm Ms. Olsen.

22 But in any event, the face of the warrant has
23 to control, and they didn't put anything beyond threats
24 into the face of the warrant.

25 Your Honor, there's a bunch of other things.

1 Again, I think my argument already covers this about,
2 you know, things like printers, plotters, all those
3 things that the government had no evidence that
4 Mr. Sueiro actually possessed. And it was just maybe
5 he possesses it and maybe there's evidence of a crime
6 if we look around.

7 If Your Honor has no questions on those
8 points, I can proceed to the good faith --

9 THE COURT: Please.

10 MR. GOROKHOV: So just a couple of points
11 about good faith, and I'm going to focus on the
12 government's response that they made to the filing by
13 prior counsel. I want to just point out a couple of
14 legal issues with good faith and then proceed to the
15 facts.

16 So number one, good faith is a little bit
17 misleading because it actually has to do with objective
18 reasonableness, not subjective good faith.

19 Secondly, the courts have been clear that in
20 considering good faith, we don't just evaluate some
21 random police officer. We evaluate the particular
22 police officer who applied for the affidavit and the
23 knowledge that that particular police officer had in
24 this case, which is very important in this case, Your
25 Honor.

1 Thirdly, it's the government that actually
2 has the burden to establish good faith. It's the
3 government that has the burden to establish that
4 Detective Leightley was reasonable in obtaining the
5 warrant that he got in this case.

6 So without assuming the burden, without
7 assuming the burden, I would just -- I would just point
8 Your Honor back to all of my arguments dealing with
9 probable cause and dealing with overbreadth and point
10 out that it's not reasonable for Detective Leightley to
11 get a warrant for every device in the house when he
12 knows it's Christopher Sueiro they're looking at or
13 Christopher Sueiro's room or Christopher Sueiro's
14 property. It's not reasonable for Detective Leightley
15 to say maybe he has a phone and maybe that phone has
16 evidence of a crime. All of these things are not
17 objectively reasonable given the investigation that
18 Detective Leightley did and the knowledge that
19 Detective Leightley had at the time.

20 He may sincerely believe these things, and I
21 don't doubt it, Your Honor. I'm not alleging any kind
22 of bad faith, any kind of a motive. He may have
23 sincerely believed all of these things, Your Honor.
24 But in a search warrant, you have to come forward with
25 articulable evidence why certain evidence exists and

1 why it's likely to contain evidence of the crime. And
2 under the broad search warrant we have here, I think,
3 Your Honor, the government falls far short of the good
4 faith standard.

5 THE COURT: All right. Thank you.

6 MR. GOROKHOV: Thank you, Your Honor.

7 THE COURT: Counsel.

8 MR. BURKE: Your Honor, I won't repeat what's
9 in our brief.

10 On particularity, it only requires that the
11 warrant state the place to be searched, which is a
12 house, the things to be seized, which include
13 computers, and the type of evidence you're looking for,
14 evidence of a threats violation.

15 The *Williams* case that we cited in the Fourth
16 Circuit is extremely similar where you had someone who
17 made a threat against children. The warrant allowed
18 any and all computers indicative of violations of the
19 threats statute, and that was sufficiently particular.

20 There's another case we didn't cite, but it's
21 *Dickerson* in the Fourth Circuit, 166 F.3d 667, pincite
22 694. It said that the search for evidence relating to,
23 quote, a specific unlawful activity, such as narcotics
24 or theft of a fur coat, is sufficiently particular. So
25 we think we certainly had that here.

1 As Your Honor pointed out, there was a limit.
2 It wasn't just any computer. It was limited to the
3 crime under investigation, which was threats, and the
4 title of the warrant was In Re Christopher Sueiro. So
5 it was focused on him. That's certainly how the
6 detective interpreted it. As Your Honor asked him, did
7 he go to other rooms? No, he did not.

8 Just on a couple of matters that were brought
9 up. In terms of the documents, it wasn't just any
10 documents. Again, documents related to the crime that
11 were evidence. He testified that he was looking for
12 *indicia* of occupancy, like his bills or things related
13 to his work. That is very common in a search warrant
14 to look for.

15 Then, just briefly, on other matters that he
16 brought up, the phone, the firearms. First, the phone
17 is a computer. There was evidence that he was using a
18 computer to send these threats. So if there was a
19 phone, it certainly would have been within the scope of
20 the investigation. But in any event, there's no phone
21 here to be suppressed.

22 We're not seeking to use the firearm. So
23 even if that was somehow outside the scope of the
24 warrant, it would be severable from the rest of the
25 warrant, and it wouldn't affect what was seized and

1 what was clearly within probable cause, which was the
2 computers. That's what we intend to use at trial.

3 THE COURT: Is that how it works?

4 MR. BURKE: Yes, Your Honor.

5 THE COURT: You can basically sever the
6 overbreadth of the warrant, exclude evidence within the
7 overbreadth, and the rest of the seizures are otherwise
8 valid?

9 MR. BURKE: Yes, Your Honor. It was actually
10 discussed in the case cited by the defense, which was
11 the Second Circuit case, *U.S. v. Galpin*, where they go
12 into the severability analysis at the end. I can cite
13 Your Honor to a Fourth Circuit on this if necessary.

14 THE COURT: All right.

15 MR. BURKE: That just goes down to generally
16 the exclusionary rule that we're careful not to use it
17 unless absolutely necessary.

18 THE COURT: All right.

19 MR. BURKE: Finally, Your Honor, the good
20 faith. I mean, to the extent that this is a close
21 call, you heard the testimony from the detective. He
22 was scrupulously attempting to follow the law. He went
23 back to get a warrant three or four different times.
24 When he found evidence of child pornography, he stopped
25 immediately and went to get another warrant, again,

1 showing that he took the part of the warrant that says
2 that this is in relation to threats crimes very
3 seriously.

4 THE COURT: There were a total five warrants?

5 MR. BURKE: Five total, Your Honor. And even
6 to the point that, apparently, the magistrates there
7 told him, you know, stop coming back to us this often
8 for these sorts of things. So he's clearly going as
9 much as he can.

10 So to the extent that there's any question,
11 we would rely on that.

12 The last thing I would point out -- actually,
13 a case that was brought to my attention by defense
14 counsel -- that in the *Paul Manafort* case, Judge Ellis
15 wrote a long opinion on this, and he found -- it was a
16 similar claim saying that they were asking for all
17 computers in the house and all documents. And the
18 first Judge Ellis found to be sufficiently particular.
19 But then he said, even if it wasn't, it would be
20 covered by good faith. And this is what he says at the
21 end. He says, Courts have routinely rejected
22 particularity challenges to warrants using the same
23 broad categories contained in this warrant, i.e., any
24 and all financial records, evidence of state of mind,
25 and electronic devices and storage media. Given that

1 courts have approved warrants containing the same
2 language as the warrant at issue here, it is
3 inconceivable that a reasonably well-trained officer
4 would have known that the warrant was invalid despite
5 the magistrate judge's authorization.

6 There he's talking about a team of FBI agents
7 led by a team of federal prosecutors at the special
8 counsel's office. Here Detective Leightley is acting
9 on his own and is clearly doing so in good faith and
10 relying on his magistrates.

11 Thank you.

12 THE COURT: All right. Mr. Gorokhov.

13 MR. GOROKHOV: Your Honor, thank you. I'll
14 be as brief as possible here.

15 I'll start with some of the points the
16 government raised as to good faith. Again, I think a
17 large part -- and I don't doubt Detective Leightley's
18 subjective intent to do things right. That's not the
19 issue here at all. The fact that he got subsequent
20 four warrants is not the issue here at all, Your Honor.
21 The issue here is what was his objective reasonableness
22 in seeking all of these items in the initial warrant
23 where they seized these items. So a lot of what the
24 government says, Your Honor, is simply not relevant.

25 In terms of the *Manafort* case -- and I

1 neglected to provide the citation. I can for Your
2 Honor if that needs to be.

3 THE COURT: No. That's all right.

4 MR. GOROKHOV: In terms of the *Manafort* case,
5 there's an interesting distinction because one of the
6 facts that Judge Ellis actually focused on was that the
7 FBI agent in that case talked to an employee who
8 currently worked for Manafort at that time, and that
9 employee provided the FBI with exactly the kind of
10 information that was missing in this case. That
11 employee told the FBI that Manafort uses this computer
12 to do business. He has a lot of business documents in
13 this part of his house. He uses electronic devices in
14 connection with his business documents. He's got a
15 drawer full of cell phones that he -- that he -- you
16 know, when he stops using the cell phone, he puts it in
17 this drawer.

18 So that's exactly the kind of evidence that
19 lays the foundation, that lays the appropriate basis
20 for a police officer to then go and obtain a search
21 warrant. That's exactly the kind of information and
22 evidence that was missing in this case, Your Honor.

23 In terms of the *Williams* case that the
24 government cites, I would -- I would just briefly note
25 that in that case, there was a threat -- there was an

1 allegation of threats, but there was also an allegation
2 of harassment by computer in which the defendant in
3 that case clearly said things about child abuse and
4 said things about being a pedophile. And that's
5 actually -- that aspect of the warrant was actually
6 what was relied on in upholding the search of the
7 electronic media in that case.

8 It wasn't the threats part. It was the fact
9 that he sent lewd and lascivious materials involving
10 children and child abuse that gave them probable cause
11 to search these devices for inappropriate materials for
12 child porn -- child abuse materials.

13 The last point, Your Honor, I'll make is one
14 that you asked of the government, which is if the
15 warrant is facially overbroad, is it severable? The
16 answer to that, Your Honor, I think is clear from
17 *Griffith* that -- from the D.C. Circuit case and other
18 cases that if the warrant is facially overbroad,
19 everything is suppressed. That's the appropriate
20 remedy.

21 We would submit, Your Honor, that *Griffith* is
22 the controlling case on that even though it's from a
23 different circuit, but I think it's fairly clear and
24 supported by Supreme Court precedent.

25 THE COURT: All right.

1 MR. GOROKHOV: Thank you, Your Honor.

2 THE COURT: I've reviewed the motion. I
3 think it's a substantial motion and it raises
4 substantial issues that the Court needs to deal with.

5 First of all, I think the clearest issue is
6 the probable cause issue. I think there was clearly
7 probable cause for each of these warrants.

8 I think that the more difficult -- the closer
9 issue is with respect to the particularity requirement
10 of these warrants. The particularity requirement
11 really has three components:

12 First, the warrant must identify the specific
13 offense for which the police have established probable
14 cause, which these warrants do;

15 Second, the warrant must describe the place
16 to be searched, which these warrants do; and

17 Third, the warrant must specify the items to
18 be seized by the relation to the designated crimes, and
19 it's this third area that raises, I think, substantial
20 issues.

21 Here the warrants do incorporate the
22 affidavits, and the Court has to assess the
23 particularity requirement within the context of the
24 entire warrant, including the items and also the
25 language of the warrant, which does, albeit in less

1 than perhaps ideal language, reference that the items
2 to be seized are those that relate to the designated
3 offense.

4 Based on all the facts and circumstances of
5 these warrants, the Court does conclude -- although I
6 do think it is a substantial issue -- that the warrants
7 satisfy the particularity requirement. Alternatively,
8 the Court also concludes that any overbreadth falls
9 within the good faith exception. The Court concludes
10 that the affidavits are not so facially deficient by
11 failing to particularize the place to be searched or
12 the things to be seized that the executing officers in
13 this case could not reasonably presume it to be valid.

14 As I said, a lot of these are standard forms,
15 standard practices. As Judge Ellis mentioned in his
16 *Manafort* opinion, courts have approved much of the
17 language that's challenged in this case under various
18 circumstances. Overall, the Court concludes that any
19 defect in these warrants are covered by the good faith
20 exception.

21 So for those reasons, the Court is going to
22 deny the motion to suppress.

23 Anything further?

24 MR. BURKE: Not from the government, Your
25 Honor.

1 THE COURT: All right. Your argument was
2 excellent, Mr. Gorokhov.

3 MR. GOROKHOV: Oh, thank you, Your Honor.

4 THE COURT: It's a tough issue.

5 All right. Anything else?

6 MR. GOROKHOV: No, Your Honor. Thank you.

7 THE COURT: All right. The Court stands in
8 recess until 2:00.

9 -----
Time: 12:34 p.m.

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I certify that the foregoing is a true and
accurate transcription of my stenographic notes.

/s/
Rhonda F. Montgomery, CCR, RPR